

The University of Chicago

AMERICAN INTERVENTION IN EUROPE, 1917

A PART OF A DISSERTATION SUBMITTED TO
THE FACULTY OF THE DIVISION OF THE
SOCIAL SCIENCES IN CANDIDACY FOR THE
DEGREE OF DOCTOR OF PHILOSOPHY

INTERNATIONAL RELATIONS

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By
EDWARD H. BUEHRIG

Reprinted from
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(*With an Introduction and a Conclusion privately printed*)

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INTRODUCTION

The opening years of the twentieth century reaffirmed neutrality as a fixed principle in American opinion and policy. In 1914 the international law of neutrality was at the highest point of development and prestige in its history. Although the Hague conventions left much to be desired, they gave to the difficult subject of neutrality an unprecedented clearness of definition. An international prize court was not established, but it was given such serious consideration as to have prompted the drawing up of the Declaration of London. The failure of this codification of the law of neutrality to achieve the ratification of Great Britain, while it presaged legal storms ahead, did not disturb the confident attachment of the American people and Government to neutrality at the outbreak of the World War.

Seldom have international law and national policy been so completely identified as in this American instance. It was a relationship resulting not from deliberate reflection as of 1914, but from tradition.¹ The legal status of neutrality and national policy had become fused and indistinguishable.² Although extra-

¹In view of his later position, the early reaction of Theodore Roosevelt as expressed in an editorial in the Outlook, September 23, 1914, is interesting:

"All of us on this continent ought to appreciate how fortunate we are that we of the Western world have been free from the working of the causes which have produced the bitter and vindictive hatred among the great military powers of the Old World. . . . It is certainly eminently desirable that we should remain entirely neutral and nothing but urgent need would warrant breaking our neutrality and taking sides one way or the other."

Walter Hines Page, who, like Roosevelt, shortly became an interventionist, wrote to House on August 28, 1914: "What a magnificent spectacle our country presents! We escape murder, we escape brutalization; we will have to settle it; we gain in every way." Charles Seymour, The Intimate Papers of Colonel House (New York: Houghton Mifflin Company, 1926), I, 286.

²For a later instance of this phenomenon see the testimony of William C. Dennis on the Lend-Lease Bill (H. 1776) before the Committee on Foreign Affairs of the House of Representatives, January, 1941:

neutrality considerations played an important part in shaping American policy, the norms of neutrality had such tenacity that they continued, in a curiously confused way, to be a point of departure in the decision for war.

The large attention which one is obliged to give to the substantive rules of international law in a treatment of German-American relations from 1914 to 1917 is extraordinary. If for no other reason than "a decent respect to the opinions of mankind," war is always preceded by legalistic talk between prospective belligerents. But the fact that a dispute is couched in the language of rights and duties seldom appears prominently in subsequent accounts of a war's genesis. We hardly need remind ourselves that in some instances it is not significant that a diplomat speaks in legal language. The author of such language may not in the least be convinced that the legal rules and principles to which he appeals are a relevant yardstick against which to measure his policy.¹ When legal norms are used in this fashion, it is irrelevant for an investigator to take them seriously.

The antecedent legal language in the relations of the United States and Germany, however, cannot be treated so cavalierly. The significance of the American experience during the World War is, not that the law of neutrality was insincerely or ineptly used, but that it was inadequate for compromising the demands, economic and political, which the American and belligerent governments felt obliged to make in their mutual relations. The history of the American transition from neutrality to intervention must be written in the context of a legal system which was appealed to at every turn, but the weakness of whose assumptions, abstention

Mr. Dennis. . . . I would not be willing to violate international law to save the British Empire.

Mr. Richards. There is not much international law left around here, is there?

Mr. Dennis. Yes; but I think that there is; I realize that many great men have told you that, . . . but as one American citizen, I think that there is international law, and that we shall live to profit by it if we observe it.

For a similar point of view see the testimony of Professor Herbert Wright on the Lend-Lease Bill (S. 275) before the Committee on Foreign Relations of the Senate, January and February, 1941.

¹Appeal by the Executive (in its relations with Congress) to the law of neutrality in the fall of 1939 in justification of the demand that the embargo on arms and munitions be raised is a case in point.

and impartiality, was progressively more exposed. The nineteenth century system of neutrality, which in 1914 was at the pinnacle of its prestige, failed to meet a crucial test. It is our purpose to examine the circumstances of that collapse. We shall undertake to describe the economic and political forces which the law of neutrality failed to contain.

An account of American intervention in 1917 must begin where American policy in 1914 began--with the norms of neutrality. In the first chapter we shall review the operation of these norms in the relations of the United States and Germany up to the impasse of February 1, 1917. In succeeding chapters we shall examine the economic and political forces with which the law of neutrality collided. Finally, through the medium of the Congressional debates on the war resolution, we shall set forth the confused way in which the situation registered itself on public opinion.

FREEDOM OF THE SEAS: 1917, 1941

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Before Pearl Harbor it appeared that the United States would enter the second World War in defense of traditional freedom of the seas as it did in 1917. But the issue did not have identical content in both instances; nor was its ultimate relation to the declaration of war the same. The substantive differences in the issue were considerable and important. In his address to the Nation on September 11, 1941, President Roosevelt attempted to identify freedom of the seas in 1941 with the historic rôle of the doctrine in American foreign policy. On this occasion the President said that "Generation after generation, America has battled for the general policy of freedom of the seas," and that his order to the American armed forces to attack any "German or Italian vessels of war [which] enter the waters the protection of which is necessary for American defense" was in response to a "historic" obligation on him as President.¹ We shall see, however, that the President's analogy between the issue in 1941 and that in 1917 and earlier periods is not altogether convincing. Moreover, as it happened, Pearl Harbor and the subsequent declarations of war on the United States removed the possibility that final action in 1941 would follow the pattern of 1917.

¹ *Department of State Bulletin*, Vol. 5, No. 116, pp. 193-197.

The issue of freedom of the seas also finds expression in Article 7 of the Atlantic Charter: "such a peace [as referred to in Article 6] should enable all men to traverse the high seas and oceans without hindrance." *Ibid.*, Vol. 5, No. 112, p. 126. Compare with point two of Wilson's Fourteen Points. See n. 17 below.

However, in both wars freedom of the seas became an issue during the two to three year period in which the United States resisted complete engulfment. The differences between the issue in the two wars do not destroy its usefulness as a point of departure for the examination of American foreign policy in the twentieth century.

I

THE SEVERAL MEANINGS OF FREEDOM OF THE SEAS. The freedom of the high seas from the dominion of sovereign states in time of peace is a principle so well established that it has not been subject to any large controversy in recent times.² Ever since piracy has been isolated from official acts of violence and proscribed, freedom of the seas in time of peace has not been seriously in question. The last occasion on which the United States had to deal vigorously with the problem in this form was the difficulty with the Barbary states. International economic competition now takes forms more subtle than direct assault on commerce. Thus, in time of peace there may be a problem of the "open door," but not one of freedom of the seas. It must be emphasized that in modern times serious controversy over the principle is contingent on a state of war.

In its relation to force as an instrument of public policy freedom of the seas has an economic meaning and a political meaning which should be separated in our thinking. In the context of the law of neutrality freedom of the seas has received a fairly precise legal definition, and in this context its significance is primarily economic; it is related to the temporary problem of adjusting belligerent necessity to the interest of third states in continued trade. Not

² Although the broad principle itself is not questioned, the traditional limit of territorial waters has become a matter of increasing dissatisfaction. This is manifested, for instance, in the jurisdictional claims which have been made in connection with the fisheries on the "continental shelf" off the northwest coast of North America, by the United States Anti-Smuggling Act of 1935, and by the recent recommendation of the Inter-American Neutrality Committee for a twelve-mile limit. For this last instance, see the Supplement of the *American Journal of International Law*, Vol. 36, pp. 17-22 (1942).

until the League of Nations Covenant was adopted and then only by inference, did the political side of freedom of the seas receive any recognizable legal formulation. In its political form it is related to the long range problem, which suddenly becomes acute with the occurrence of actual fighting, as to who shall control the great oceanic highways. This second problem is one of security.

Neither American leaders nor the American public have successfully separated these two aspects of freedom of the seas in time of war. The confusion during World War I was very marked. In World War II, although President Roosevelt clearly had the political side of the issue in mind, his utterances were reminiscent of the traditional neutrality context, which brought to mind the economic side of the issue in Congressional and public opinion.

American foreign policy from 1935 to 1941 bears witness to the deep imprint which the freedom of the seas issue of 1917 left on American opinion. The character of the so-called neutrality legislation of the period of 1935-1939 indicates that the issue was reconstructed primarily in its economic aspect. Although this aspect of the issue was prominent during the last war, it is a serious misreading of the experience of that war to fail to view it also from the political point of view. First, we shall undertake to disentangle the confused heritage of twenty-five years ago. After showing that the political side of freedom of the seas came to overshadow the traditional neutrality-economic aspect of the issue in the first World War, we shall observe that in the second World War American policy makers viewed the issue far less equivocally as a political question.

II

FREEDOM OF THE SEAS IN 1917. What rôle did the economic interests encompassed by the law of neutrality play in determining American intervention in 1917? From the standpoint of neutral rights the law of neutrality is largely concerned with the freedom of third states to use the seas for purposes of trade with a minimum of interference from

belligerents. The economic independence and welfare of states at peace is the end in view. During the first World War the law of neutrality failed to accomplish this end. The small states of Europe, despite the recent triumphs of neutrality in the Hague Conventions and the Declaration of London, lost practically all freedom of action in their economic affairs.³ But most of them remained "neutral" in the sense that they were not invaded and did not themselves choose to combat the encroachments of the belligerents by resort to force. In the case of the United States, also, methods of economic and naval warfare were adopted by Great Britain and Germany which were extreme departures from the norms of neutrality. However, the American economy had not been, nor was it possible that it could be, stricken as had the economies of the European neutrals. Why did the United States not choose to retreat before unrestricted submarine warfare?

An important body of opinion, culminating in the Nye Committee investigation, visualized the situation as one in which private interest controlled public policy. From this standpoint freedom of the seas was divorced from conceptions of national interest and was identified with the freedom of profit seekers to make money. The relation between private interest and public policy was depicted as existing in a variety of ways. It was contended, and widely accepted, that "big business", typified by bankers and munitions makers, prevailed deviously on policy-makers in Washington to follow a course dedicated to profits, to which war presently became a natural corollary. Loans having been permitted, it was alleged that a vested interest in an Allied victory grew up. Furthermore, it was asserted that the Government was obliged to declare war to keep a war boom going in the United States — that in the spring of 1917 private credit had been exhausted by the Allies and public credit had then to be extended to prevent economic depression.

³ For an excellent account of Norway's experience see Paul G. Vigness, *The Neutrality of Norway in the World War* (Palo Alto, 1932).

From this point of view the norms of naturality became nothing more than an outer manifestation of the profit motive of the capitalistic system. However, if we contemplate the economic position of typical neutrals in wartime,⁴ this would seem to be an unduly sophistical frame of reference for judging the economic significance of neutrality. Regardless of the type of economic organization within a neutral nation, war between great powers will seriously embarrass its functioning. In American action during the last war, one can accept the presence of an economic factor⁵ without elaborating it into a "devil" theory. Instead of preoccupation with the tortuous influence of private interest on public policy as an explanation of the failure of neutrality, it would seem desirable to take into account also the great difficulty involved in any attempt to reconcile peace standards and war standards with respect to international trade.

However, one does not have to subscribe to the private interest version of the economic interpretation to agree with the advocates of the 1935-1939 legislation that aban-

⁴ "In the European neutral countries, shortages of various essentials and the restrictions upon export markets created at times desperate situations from the viewpoint of the national economy. The result was that these governments had to acquiesce in the arrangements which both groups of belligerents forced upon them. They had some bargaining power because the belligerents needed their goods, but the belligerents, and especially the Allies, held the whip hand. The result in several instances was the conclusion of 'rationing agreement' whereby practically the whole economy of the neutral state was controlled." Philip C. Jessup, *Today and Tomorrow*, Vol. 4 of *Neutrality: Its History, Economics and Law* (New York, 1936), p. 57.

⁵ The most extensive reference to this consideration made in the Congressional debates on the war resolution in 1917 was that by Senator Swanson of Virginia. He said, in part: "Do those who now counsel peace and submission to Germany fully realize the present great distress to which they invite us? Last year our total exports amounted to \$5,481,000,000. Out of this \$3,382,000,000 was exported to the allied belligerent countries, with which Germany now prohibits us from having any commercial intercourse whatsoever. In other words, if we acquiesce, as many suggest, in this illegal and tyrannical proclamation and decree of the German Government, about three-fifths of our entire export business will cease at once." *Congressional Record*, Vol. 55, part I, p. 205.

donment of freedom of the seas in its economic aspect is the lesser of two evils. If all that is at stake in the freedom of the seas controversy is the limited derangement of the economic system customarily experienced by the United States as a neutral, national interest would seem capable of being satisfied by expediency and patience until the storm has passed. If we are puzzled that the United States should have gone to war in 1917 over economic inconveniences which presently came to be judged so inconsequential by the American people as to have been no obstacle to full retreat from the freedom of the seas, perhaps our inquiry, instead of going in the direction of giving the economic factor sinister meaning in terms of internal pressure groups, should go in the direction of discovering some additional significance which the freedom of the seas issue may have had. Were there considerations other than the economic which prompted the American Government to permit itself to become irretrievably embroiled with Germany over the rules of neutrality? To what extent was the political side of the issue involved in the 1917 experience?

It is important to understand that even within the narrow confines of neutrality, with its politically negative assumptions of abstention and impartiality, President Wilson sought to give freedom of the seas a political meaning. Wilson envisaged the future welfare and freedom of action (*i.e.*, the security) of the United States in terms of international law. Reliance on legal norms rather than dependence on opportunistic negotiation and fighting effectiveness seemed to Wilson to be the pattern which the United States as a democracy had a peculiar interest in supporting and advancing in international politics.⁶ The law of neutrality

⁶ In the following excerpt from an address before the American Bar Association, October 20, 1914, we catch something of the attitude with which Wilson approached the law of neutrality: "Our first thought, I suppose, as lawyers, is of international law, of those bonds of right and principle which draw nations together and hold the community of the world to some standards of action. . . . I know that as a lawyer I have myself at times felt that there was no real comparison between the law of a nation and the law of nations, because the latter lacked the sanction that gave the former strength and validity. And yet, if you look upon the matter more closely, you

considered from this standpoint, and not alone from the standpoint of freedom to trade, prompted his adamancy in holding Germany to the traditional rules of maritime warfare. Having appealed to the law, he found he could not lightly put it aside. More than the interests shielded by the law in the particular circumstances had become involved. As he viewed it, the future vitality of the legal method of resolving conflict was in question.

Wilson expressed this opinion repeatedly in the series of preparedness speeches which he gave at the beginning of 1916. Speaking at Chicago, he said:

. . . it has been assumed throughout this struggle that the great principles of international law and of international comity had not been suspended, and the United States, as the greatest and most powerful of the disengaged nations, has been looked to to hold high the standards which should govern the relationship of nations to each other.

Later in the same speech he said that it was "not the technical principles of law, but the essential principles of right dealing and humanity as between nation and nation" which the United States as a neutral was obliged to defend.⁷

will find that the two have the same foundations, and that those foundations are more evident and conspicuous in our day than they have ever been before.

"The opinion of the world is the mistress of the world; and the processes of international law are the slow processes by which opinion works its will. What impresses me is that that is the tribunal at the bar of which we all sit." Ray Stannard Baker and William E. Dodd, eds., *Public Papers of Woodrow Wilson* (New York, 1927), Vol. 3, pp. 195-197.

⁷ *Ibid.*, Vol. 4, pp. 58-61. Wilson was aware of the difficulties with which technical developments in maritime warfare confronted neutrality, and he appreciated the trying circumstances under which the leaders of the nations at war made their decisions. Speaking at Des Moines, he said: "If American liberty were involved, if we thought that American life was involved, would we criticize our leaders and public men because they went every length of even desperate endeavor to see that the nation did not suffer and that the nation did triumph?" Wilson pointed out the difficulties in the situation because of the lack of an international tribunal and expressed the hope that the war might have the result of creating such an institution. However, he then said: "But it has not yet done that, and the only thing, therefore that keeps America out of danger is

Wilson's point of view is exceptionally well illustrated in his letter of February 24, 1916, to Senator Stone. The letter was designed to head off favorable Congressional action on the Gore-McLemore resolution which asked that American citizens "forebear to exercise the right to travel as passengers on any armed vessel of any belligerent."

He wrote:

It is important to reflect that if in this instance we allowed expediency to take the place of principle, the door would inevitably be opened to still further concessions. . . . [The] whole fine fabric of international law might crumble under our hands piece by piece. What we are contending for in this matter is of the very essence of the things that have made America a sovereign nation. She cannot yield them without conceding her own impotency as a nation and making virtual surrender of her independent position among the nations of the world.⁸

But, as we have seen, it was not merely the prestige of the United States which was at stake. Wilson identified neutrality and American insistence that the belligerents obey its rules with the welfare of the international community at large.⁹ What shall we say of this identification?

The relationship between national interest in continued trade and the norms of neutrality is sufficiently real and tangible to make an arguable case for intervention on economic grounds. But to give the freedom of the seas issue in its neutrality context political significance because it contributes to order and stability in the international community is certainly questionable. The norms of neutrality

that to some degree the understandings, the ancient and honorable understandings, of nations with regard to their relations to one another . . . are to some extent still observed and followed. . . . What is America expected to do? She is expected to do nothing less than keep law alive while the rest of the world burns." *Ibid.*, pp. 74-75.

⁸ *Ibid.*, p. 123.

⁹ On numerous occasions Wilson portrayed neutrality as an active not a passive policy. In October, 1915, he insisted in a public speech that "We are not trying to stay out of trouble; we are trying to preserve the foundations upon which the peace can be rebuilt. Peace can be rebuilt only on the ancient and accepted principles of international law. . . ." *Ibid.*, Vol. 3, p. 378. See also his address to Congress, December 7, 1915, *ibid.*, p. 406.

were a very narrow base on which to erect such a large superstructure. To protest against German submarine warfare as tearing down legal norms which were vital to the political structure of the international community was bound to be viewed in retrospect as futile and quixotic.

In part this was so because technological changes in maritime warfare have made the question of the legality of submarine warfare an unconvincing issue. Moreover, the general character of warfare has been so affected by the industrial revolution and scientific invention that the nineteenth century norms of neutrality cannot be considered any longer, if they ever were, a point of equilibrium in the relations of third states and belligerents. However, apart from this factor of a cultural lag, criticism of Wilson's insistence on observance of the norms must go deeper. The inherent nature of the neutrality system which he was undertaking to defend did not warrant his allegations of large political significance. Wilson was really protesting the anarchy in international relations which tolerated resort to force as a legitimate instrument of policy. The nineteenth-century norms of international law did tolerate such procedure, and neutrality's underlying political maxims of abstention and impartiality did nothing to disturb that fundamental aspect of the international legal system. The very assumptions from which neutrality started were assumptions of war, not of peace. Neutrality was essentially negative, not positive, in character.¹⁰ So long as Wilson took neutrality as the legal framework for the international community his protest could be directed not at force as an instrument of policy but merely at the method of warfare employed. Not only may one raise the question of whether insistence on traditional neutrality was worthwhile in terms of economic interest, it had even less justification as a means for achieving the political ends which Wilson cherished.

¹⁰ See the characterization of nineteenth-century neutrality made by George Cohn, *Neo-Neutrality* (New York, 1939), p. 9 and pp. 38-39. Cohn says very aptly: "War was the sun, about which the law of neutrality was to revolve like a planet."

III

FREEDOM OF THE SEAS AND THE LEAGUE OF NATIONS. The tortured politico-legal significance which Wilson attached to neutrality in the first two years of the war eventually gave way in his own thinking to the concept of a league of nations. His address to the League to Enforce Peace, May 27, 1916, is the first public expression of this radical shift in Wilson's thought from neutrality to collective security as the politico-legal framework in which to view and judge the relations of the United States with the world. His campaign speeches in the fall of 1916, in sharp contrast to his preparedness speeches in the beginning of that year, do not undertake to justify American interest in the European war in the context of the norms of neutrality. Wilson spoke critically of neutrality. At Cincinnati on October 26, he said:

Now, revive that [the pre-war system of European international politics] after this war is over and sooner or later you will have just such another war, and this is the last war of the kind or of any other kind that involves the world that the United States can keep out of.

I say that because I believe that the business of neutrality is over; not because I want it to be over, but I mean this, that war now has such a scale that the position of neutrals sooner or later becomes intolerable.¹¹

Shortly before, at Omaha, Wilson had charged that "we have never yet sufficiently formulated our program for America with regard to the rest of the world, and it is imperative that she should formulate it at once." He said, "... we ought to have a touchstone. We want to have a test. We ought to know, whenever we act, what the purpose is, what the ultimate goal is." He continued:

Now the touchstone is this: On our own part absolute singleness of heart and purpose in our allegiance to America by holding the doctrine that is truly American, that the States of America were set up to vindicate the rights of man and not the rights of property or the rights of self-aggrandizement and aggression.

¹¹ *Public Papers of Woodrow Wilson*, p. 381.

When you are asked, "aren't you willing to fight?" reply, yes, you are waiting for something worth fighting for; you are not looking for petty quarrels, but you are looking about for that sort of quarrel within whose intricacies are written all the texts of the rights of men, you are looking for some cause which will elevate your spirit, not depress it, some cause in which it seems a glory to shed human blood, if it be necessary, so that all the common compacts of liberty may be sealed with the blood of free men.

One may confidently say that Wilson did not consider the rules of neutrality to encompass the issues here formulated. He made his new point of departure very explicit:

. . . we want all the world to know that we are ready to lend our force without stint to the preservation of peace in the interest of mankind. The world is no longer divided into little circles of interest. The world no longer consists of neighborhoods. The world is linked together in a common life and interest such as humanity never saw before, and the starting of wars can never again be a private and individual matter for the nations.

What disturbs the life of the whole world is the concern of the whole world, and it is our duty to lend the full force of this nation, moral and physical, to a league of nations which shall see to it that nobody disturbs the peace of the world without submitting his case first to the opinion of mankind.¹²

Wilson was abandoning the spectacles of neutrality as an unsatisfactory medium through which to view the war. He felt that the norms of neutrality were leading him into a blind alley; they were not leading him in the direction in which he was convinced he should and must go. He was trying in the summer and fall of 1916 to express America's relation to the war in more satisfactory form than permitted by the commercialism and political impotency of the norms of neutrality. The full amplitude of his shift is revealed later in his War Address where he declared that "Neutrality is no longer feasible or *desirable*. . . ." ¹³ The context in which this statement occurs indicates that he was speaking not alone of the immediate circumstances but of the indefinite future.

Large sections of public and Congressional opinion never

¹² *Ibid.*, pp. 346-349.

¹³ *Ibid.*, Vol. 5, p. 11. Italics supplied.

understood this transition in Wilson's thinking. To many whatever was at stake in the controversy with Germany was encompassed by the norms of neutrality and only in the event of a radical German departure from those norms could or should the United States consider taking up arms against the German Government. With respect to the freedom of the seas issue it would appear that the transition was confused in Wilson's mind as well, with the result that freedom of the seas still remained a prominent battle cry, though it was an ambiguous representation of Wilson's thought and policy. The United States went to war amid a complexity of words and legalisms which served very poorly as a medium for expressing American policy.

Upon his abandonment of traditional neutrality as the point of departure for American foreign policy, Wilson failed, despite great persistence, satisfactorily to incorporate the principle of the freedom of the seas into his new viewpoint. Apparently he did not see clearly until after the war that the freedom of the seas traditionally espoused in American history could not be transferred to a league of nations context without undergoing a radical transformation in character. Traditionally, it was a demand for freedom to trade in war time when the United States was neutral. A league of nations is not concerned with this problem. On the contrary, it can be expected to result in the reduction of that freedom on the part of third states. A league is designed to solve this question: Where shall authority reside to determine who shall have the use and advantage of trade routes on the high seas? It undertakes to supplant arbitrary national judgment on that question with the collective will of an organized international community. The end is not, as in the case of neutrality, to leave third states as unembarrassed as possible in their trade relations with belligerents, but to discourage and suppress aggression, which may entail great economic sacrifices on the part of third states.

Because of his attachment of politico-legal significance to the law of neutrality, Wilson was inclined to speak indiscriminately of freedom of the seas in both the neutrality

and collective security contexts. That Wilson was conscious of the problem in a light different from that of traditional neutrality is intimated, however, in his address before the Senate January 22, 1917. Wilson seemed to express the traditional conception in his fourth condition of a stable peace: "The freedom of the seas is the *sine qua non* of peace, equality and cooperation." He then added, however, by way of transition to his fifth condition (disarmament): "It [freedom of the seas] is a problem closely connected with the limitation of armaments and the cooperation of the world in keeping the seas at once free and safe." Here he would seem to be referring to the political side of freedom of the seas, with respect to which the law of neutrality had no relevance. This was the burden, also, of Wilson's reply to House in the fall of 1918 when the latter informed him that Lloyd George could not accept freedom of the seas as one of the bases for an armistice with Germany because "it takes away from us [England] the power of blockade."¹⁴ Wilson gave this instruction: "I feel it my solemn duty to authorize you to say that I cannot consent to take part in the negotiation of a peace which does not include freedom of the seas because we are pledged to fight not only to do away with Prussian militarism but with militarism everywhere."¹⁵

But at this time, Wilson apparently did not become fully aware of the difference and, in fact, the incompatibility, between the two meanings he was assigning to freedom of the seas. Thus, he would seem to have been placing a false emphasis when in summary at the conclusion of his January 22 address to the Senate he said, "I am proposing [among

¹⁴ Carlton Savage, *Policy of the United States toward Maritime Commerce in War* (Washington, 1936), Vol. 2, p. 859.

¹⁵ *Ibid.*, p. 859.

Nevertheless, in the pre-armistice agreement of November 5, 1918, the Allies made a reservation with respect to the freedom of the seas clause of the fourteen points: "They [the Allies] must point out . . . that clause two relating to what is usually described as the freedom of the seas, is open to various interpretations, some of which they could not accept. They must, therefore, reserve to themselves complete freedom on this subject when they enter the peace conference." James Brown Scott, ed., *Official Statements of War Aims and Peace Proposals* (Washington, 1921), p. 457.

other things] . . . that freedom of the seas which in international conference after conference representatives of the United States have urged with the eloquence of those who are convinced disciples of liberty.”¹⁶ This can only refer to the economic meaning of freedom of the seas in its historic neutrality context. Yet, as we have seen, other references to the issue indicate that he was thinking of it in a political sense — that he was interested not in freedom to trade but freedom from arbitrary and self-interested dictation imposed on the international community. The editorial query made contemporaneously by the *New Republic* was very much to the point:

On one point he [Wilson] seems to us not altogether sound. . . . In an organized world freedom of the seas would certainly not exist for the aggressor. In fact, the greatest weapon of the league would be the power to isolate and coerce the law breaker. . . . He may have meant that maritime discrimination [in time of peace] should be prevented. Nevertheless, there is a real possibility of confusion in the form of his statement. It does seem to imply a kind of Manchester laissez-faire of the seas, an unworkable and inconsistent idea. What is needed is an organization of the seas which will produce freedom in time of peace and complete blockade and siege against the aggressor in time of war.¹⁷

¹⁶ *Public Papers of Woodrow Wilson*, Vol. 4, p. 414.

¹⁷ Vol. 9, No. 117 (1917).

Another contemporary reaction worth noting was that of David F. Houston, Wilson's Secretary of Agriculture: "I felt that the reference to the freedom of the seas was unfortunate because I had never heard anyone even suggest how in time of war they could be free. They can be free only when there is peace; and the only method I have any knowledge of for keeping the seas free is to prevent war among the great powers. No great nation in time of war will fail to use its navy to prevent its enemy from getting supplies or to protect its own. Free movement of all commerce in time of war is inconceivable. The only remedy is to have no war." *Eight Years with Wilson's Cabinet* (Garden City, 1926), Vol. 1, pp. 226-227.

It should be noted that in his January 8, 1918, address to Congress, Wilson did give recognition to the point of view expressed by the *New Republic*. The second point reads: "Absolute freedom of navigation upon the seas, outside territorial waters, alike in peace and in war, except as the seas may be closed in whole or in part by international action for the enforcement of international covenants." Scott, *op. cit.*, p. 237. However, as we have seen above (n. 15), this statement of the matter was still too ambiguous for the Allies to accept.

Although freedom of the seas constituted the grounds for breaking off relations with Germany, it had largely lost the meaning customarily associated with it in American foreign policy. In a public address September 19, 1919, Wilson made this incidental but significant reference to the subject:

... one of the things that occurred in this conference, as a sort of practical joke on myself, was this: one of the principles I went to Paris most insisting on was the freedom of the seas. Now the freedom of the seas means the definition of the right of neutrals to use the seas when other nations are at war, but under the League of Nations there can be no neutrals, and, therefore, what I have called the practical joke on myself was that by the very thing that I was advocating it became unnecessary to define the freedom of the seas. All nations are engaged to maintain the right, and in that sense no nation can be neutral when the right is invaded, and all being comrades and partners in a common course, we all have an equal right to use the seas. To my mind it is a much better solution than had occurred to me or than had occurred to anyone else with regard to that single definition of right.¹⁸

Considered as a proposition in law, freedom of the seas has two different and conflicting frames of reference. The law of neutrality is the older and more familiar. In the framework of the rights and duties of neutrality, freedom of the seas can be made to embrace only that part of national interest which relates to transitory trade advantage. If one wishes to give legal definition to the political side of the question, he will find little in the practice and theory of the Western State System to assist him. Thus Wilson was handicapped in giving a legal formulation to America's interest in the future of the seas' control. Only within the framework of a hypothetical league of nations could the problem be given jural expression, for only in such a framework could the necessary assumptions of an international community with an authoritative voice of its own be predicated. Even in the most favorable circumstances it is a difficult undertaking to characterize foreign policy in the language of legal abstraction. In this case the difficulty was multiplied by the simultaneous employment of

¹⁸ *Public Papers of Woodrow Wilson*, Vol. 6, pp. 293-294.

two frames of reference which failed to complement each other.

But freedom of the seas had meaning from yet a third standpoint. The question of control of the seas had more than a legalistic and academic interest for the United States. It had significance also from the standpoint of balance of power. The fact that Americans were unaccustomed to think of international politics from the standpoint of fighting effectiveness, and the predilection of Wilson to think and talk about international politics through the medium of legal norms, obscured this consideration. Nevertheless, it was a factor of great importance in the shaping of crucial decisions. On the one hand, there was the alternative of adopting a policy of maritime and naval independence from Great Britain, which would assist Germany in the achievement of that very goal on her own behalf. On the other hand, the United States might seek to adjust itself to the fact of British sea power, not by hostile competition, but by temporary acquiescence and, if possible, the substitution, ultimately, of international control for arbitrary national control of the seas. These were the horns of a dilemma and there were no legal norms available for its solution. The norms of a league of nations and its attendant principle of collective security remained in the future, while the norms of neutrality presupposed a third course of action which in reality did not exist. The injunction to impartiality and abstention could not in practice conjure away the unavoidable choice between the combatants.

It is beyond the scope of this paper to examine the circumstances which determined the American choice in favor of Great Britain. It is enough to observe that American policy-makers as they proceeded from one piecemeal decision to another in the task of applying the norms of neutrality to the recalcitrant events of the war inevitably bent American policy in a direction favorable to Great Britain. Thus, on the one hand, the moral demand, deeply ingrained in American consciousness, that conduct conform to principles of abstention and impartiality was satisfied, while, on the other hand, policy followed the only course which American

interest could tolerate. As a consequence American opinion was predisposed to accept Germany's unrestricted use of the submarine as a moral rather than as a political challenge.¹⁹ Furthermore, among those prepared to accept the challenge as political there was no consensus as to whether it should be contemplated in the framework of a league of nations or in the context of the accustomed assumption of violence in international politics.

IV

FREEDOM OF THE SEAS IN 1941. It was against this background of confusion that the freedom of the seas issue appeared again in the present war. In this case, however, it was almost entirely divested of the presumptions of neutrality which marked it so prominently in the last war. Legal justification of American policy was attempted on the basis of assumptions quite different from those of neutrality, and at the same time the issue was spoken of in undisguised balance of power terms.

Secretary of Navy Knox in his testimony before the House Foreign Affairs Committee, October 13, 1941, on the resolution to repeal the ban on arming American mer-

¹⁹ The failure of the doctrine of the freedom of the seas in its neutrality context to express accurately the true character of American policy was set forth in an editorial in the March 17, 1917, issue of the *New Republic* entitled "The Weak Spot in the American Position." Having referred to the embroilment over freedom of the seas, it continues: "This legal tangle can be complicated *ad infinitum*. It arises in the first place from our government's attempt to state a thoroughly differential policy in purely legal terms. It is pursuing a policy, not merely enforcing American rights, and at the same time it is refusing to describe the policy candidly and justify it, as it can be justified, on the grounds of vital national and international interest. . . .

"The real weakness of the American position today is not the course of action we have adopted but the nature of the policy on which that action is based. . . . By obscuring the issue in legalism the administration is in the very grave danger of making the conflict with Germany sterile and altogether meaningless.

"As the thing now stands it is made to appear as if we were fighting a duel of honor, or worse still, fighting for the profits of our export trade. If that is all that is at stake it is not worth the bones of a single American sailor, and the contention of Mr. Bryan is fundamentally sound. . . ." Vol. 5, No. 24.

chantmen, although he criticized the 1935-39 legislation as based on the incorrect assumption "that we could establish and maintain neutrality, no matter what happened in other parts of the world solely because we chose to do so," said that he "readily recognized that those who voted for it felt that they had very substantial reasons for doing so." Referring to the economic side of freedom of the seas, he said:

First, those who voted for the act did not want the United States involved in incidents which might lead to war, and second, they did not want the United States involved in war as a result of the action of private individuals who were keen to make profits out of trading with the belligerents. In this particular and in this sense, it may be said with justification that the act has been successful — the United States has not gone to war over incidents, and it has not been dragged nearer to war by any act of private interests or private individuals.

Knox was aware of the neutrality-economic context in which freedom of the seas has customarily been thought of in the United States and he proposed quite a different yardstick against which to measure freedom of the seas. He said:

We should measure our action in this situation by asking ourselves which course best promotes our security — the retention of the law which . . . handicaps our repeatedly professed purpose to aid in every way those fighting Hitler, or to recognize that our true interests and security lie in the removal of every restriction and handicap upon our efforts to so influence the outcome of the war as to be sure that the land on the opposite shore of the Atlantic shall remain in the hands and under the control of a friendly power.²⁰

Secretary of State Hull's testimony before the Committee contained a reference to part IV of the London Naval Treaty of 1930, which obliges submarines to conform to the rules of cruiser warfare, and to the adherence of forty-seven nations, including Germany (1936), to the principle there laid down. Judging from this standpoint, he called German submarines in the present war "twentieth century

²⁰ United States Congress, House Committee on Foreign Affairs. *Hearings on H. J. Res. 237 for Arming American Merchantmen*. 77th Congress, 1st Sess. (Washington, 1941), pp. 7-10.

pirates." However, he did not let his case rest there. He observed that "if Hitler should succeed in his supreme purpose to conquer Great Britain and thus secure control of the high seas we would suddenly find the danger [of aggression] at our door." He made his ultimate point of departure quite clear: "We are confronted with a paramount problem, and we must be guided by a controlling principle. The problem is to set up as swiftly as possible the most effective means of self-defense. The principle is that the first duty of an independent nation is to safeguard its own security."²¹

On May 21, 1941, the American freighter *Robin Moor* was sunk by a German submarine and on June 20 President Roosevelt addressed a message to Congress in which he pointed out that the action was seriously at variance with the rules of cruiser warfare:

The sinking of this American ship by a German submarine flagrantly violated the right of United States vessels freely to navigate the seas subject only to a belligerent right accepted under international law. This belligerent right, as is known to the German Government, does not include the right deliberately to sink a merchant vessel, leaving the passengers and crew to the mercies of the elements

The total disregard shown for the most elementary principles of international law and of humanity brands the sinking of the *Robin Moor* as the act of an international outlaw. . . . Full reparation for the losses and damages suffered by American nationals will be expected from the German Government.

Whereas during the first World War President Wilson was hesitant to go beyond this point and left the impression that American interests at stake were encompassed by neutrality's assumptions of impartiality and abstention and the niceties of maritime warfare,²² President Roosevelt did

²¹ *Ibid.*, pp. 2-5.

²² However, in his War Address (for the first time in a public utterance) Wilson did speak of relations with Germany in a non-legalistic context. He said: "We are accepting this challenge of hostile purpose because we know that in such a Government, following such methods, we can never have a friend; and that in the presence of its organized power, always lying in wait to accomplish we know not what purpose, there can be no assured security for the democratic Governments of the world." *Public Papers of Woodrow Wilson*, Vol. 5, pp. 13-14.

not let the matter rest there. He continued his message by saying:

Were this incident capable of being regarded apart from a more general background, its implications might be less serious—but it must be interpreted in the light of a declared and actively pursued policy of frightfulness and intimidation which has been used by the German Reich as an instrument of international policy. . . .

Viewed in the light of the circumstances the sinking of the *Robin Moor* becomes a disclosure of policy as well as an example of method. Heretofore, lawless acts of violence have been preludes to schemes of land conquest. This one appears to be a first step in assertion of the supreme purpose of the German Reich to seize control of the high seas, the conquest of Great Britain being an indispensable part of that seizure. . . .

In brief, we must take the sinking of the *Robin Moor* as a warning to the United States not to resist the Nazi movement of world conquest. It is a warning that the United States may use the high seas of the world only with Nazi consent.²³

It is clear that during the present war American policy-makers have been uninhibited in referring to freedom of the seas in balance of power terms. At the same time, however, an attempt was made to give American policy in all its aspects, including positive efforts to secure the sea lanes, a legal basis more precise than the general principle of self-defense. The policy was frankly discriminatory and no attempt was made to reconcile it with the norms of impartiality and abstention. However, legal justification was found in the Pact of Paris.²⁴ Thus, the House Committee on Foreign Affairs in its report on the Lend-Lease bill argued that the bill did not violate international law, because "In the first place, it is a firmly established principle of international law that a nation is justified in acting in its own self-defense." It then continued:

Secondly, mutuality is an accepted principle of international law as well as of equity, and a nation which violates the basic rules of international law is not in a position to claim that another nation, in the interests of its own defense, is not complying with the less basic rules of international law. Furthermore, the Kellogg-Briand

²³ *Department of State Bulletin*, Vol. 4, No. 104, pp. 741-742.

²⁴ Quincy Wright, "The Lend-Lease Bill and International Law," *American Journal of International Law*, Vol. 35, pp. 305-314 (1941).

Pact, which is a part of international law, not only was intended to outlaw force as a means of resolving international disputes, but its violation has also been regarded by many distinguished international lawyers as giving any signatory the power "to decline to observe toward the State violating the Pact the duties prescribed by International Law, apart from the Pact, for a neutral in relation to a belligerent; [and to] Supply the State attacked with financial or material assistance, including munitions of war. . . ." ²⁵

The most complete statement of the legal assumptions underlying American policy was that made by Robert H. Jackson, then Attorney General of the United States, before the Inter-American Bar Association, Havana, Cuba, March 27, 1941.²⁶ He said that he wanted "the legal profession of this hemisphere to know that [American decisions of policy] are being made in the conviction that the structure of international law, however apparently shaken is one of the most valuable assets of our civilization" and that the United States had "made conscientious effort to square . . . national policy with enlightened concepts of the law of nations viewed in its entirety."

This had been the endeavor also of Wilson. But whereas Wilson had great difficulty in freeing himself from the presumptions of neutrality, we now find that the neutrality system is completely rejected. Speaking of nineteenth century neutrality, Jackson said that

the applicability of these rules has been superseded. Events since the World War have rejected the fictions and assumptions upon which the older rule rested. To appreciate the proper scope of that doctrine of an impartial neutrality we must look to its foundations. Its cornerstone is the proposition that each sovereign state is quite outside of any law, subject to no control except its own will, and under no legal duty to any other nation.

From this it is reasoned that, since there is no law binding it to keep the peace, all wars are legal and all wars must be regarded as just. . . . It is easy to see how an international law which holds all wars to be legal, and all warring nations as possessed of equal rights, arrives at the conclusion that neutrals must not discriminate between belligerents.

Jackson stated the legal justification of American policy as follows:

²⁵ 77th Cong., 1st Sess., H. of R. Report No. 18, pp. 5-6.

²⁶ *American Journal of International Law*, Vol. 35, pp. 348-359.

By resorting to war in violation of the provisions of the Kellogg-Briand Pact, or the Argentine Anti-War Treaty, the Governments of Germany, Italy and Japan violated a right and affected the interests of the United States. It was not a mere formal or theoretical right that was thus affected. The very basis of these treaties was the assumption that, in this age of interdependence, all its signatories had a direct interest in the maintenance of peace and that war had ceased to be a matter of exclusive interest for the belligerents directly affected. If that is so—and it is so—then international law provides an ample and practically unlimited basis for discriminatory action against states responsible for the violation of the treaty or treaties.

If the President's "shoot on sight" order of September 11, 1941, is to be given legal justification, it must be in such terms as these, rather than in terms of the historic freedom of the seas doctrine. The phrase freedom of the seas will no doubt remain in our vocabulary (as it has in the President's), but we would do well to think of it in quotation marks. Our anxiety in the two wars of this century has not been confined to the freedom to trade in the presence of war but has been concerned chiefly with the more important long-range question as to who shall command the seas.

It is an illusion that a political vacuum can exist over the high seas. Even in time of peace the idea of *res nullius* is only partially applicable; although there is in that case freedom of navigation, the threat of interference which the existence of navies implies exercises very real influence on the foreign policy of nations. By the end of the nineteenth century we had tended to lose sight of this fact because British sea power was used in such a way as not to be incompatible with our own interests. Equally with Britain, we were content with the *status quo*. Our only quarrel with British control was over interference with our trade during those relatively brief periods when the British fleet was proving itself against challengers. In the present century this quarrel has paled into insignificance before the prospect that Britain's accustomed position might be overthrown by some other power. When this old landmark of our foreign policy was gravely threatened we could no longer indulge the illusion that the seas were free; we have

been forced to recognize that it makes a difference who sits astride the greatest bottleneck of all—the world's sea lanes.

It is, then, command of the seas and not "freedom of the seas" in which we are interested. The focus of attention has shifted from the rules of maritime warfare to the vaster question of positive control—the question of whether this will be achieved through our own unilateral domination with the aid, perhaps, of allies, or through an international organization capable of formulating and giving force to the will of the international community. The energy and ingenuity that has been expended on the rules of maritime warfare might more worthily be employed on this larger question, although one should not be surprised if the difficulty of bringing the *methods* of warfare into line with legal norms were experienced also in the endeavor to make the *ends* of forceful action on the seas conform to standards truly expressive of international interest.

The historic doctrine of freedom of the seas seems very Lilliputian indeed in the shadow of the overwhelming naval power now possessed by the United States. It is not to be expected that such a narrowly conceived doctrine can furnish the guiding principle for employment of the largest navy in the world. Nor can it be expected that recent departures from the ancient doctrine—the abnegation of the "neutrality" legislation from 1935-1939 and, contrariwise, the assertiveness of the Declaration of Panama—possess the key to a guiding principle sufficiently broad and positive to be serviceable in peace and war. Henceforth our policy with respect to the high seas will be dominated by the demands of security, not just security for our ships when other nations are at war nor immunity from belligerent action within a belt of a few hundred miles around the Western Hemisphere, but security from disturbances to the world peace. Willy-nilly we have fallen heir to Britain's former rôle.

There is only one way in which "freedom of the seas" can be rehabilitated, and then only in such fashion as to divorce it completely from its former meaning. The question of who controls the seas for what purpose and at what

time can be related to freedom if that control is in the interest of the international community as a whole. Freedom would exist, then, not in the *laissez-faire* sense, but in the sense that the seas would be governed with responsibility to the general welfare; the seas would be *res publica*. Experience has shown that this is the only tolerable kind of freedom. But the degree to which the United States chooses to use its sea power in accordance with a really vital international law remains to be seen.

V

CONCLUSION. In 1917 the considerations which prompted the United States Government to be adamant in the demands which it made on Germany were only in part encompassed by the norms of neutrality. Freedom of the seas in its economic meaning was appropriately related to neutrality, and the failure of neutrality left this interest unprotected. The principle of freedom of the seas became confused because its political aspect was also associated with the law of neutrality — as if this interest, too, were exposed by the failure of neutrality, when, in fact, the norms of neutrality did not encompass it in the first place. If American interest in the long range problem of control of the seas were to be expressed in the framework of legal norms, the creation of entirely new norms, which could have no generic relationship to the law of neutrality was necessitated. This Wilson sought to do without fully realizing that he was using the freedom of the seas idea in two quite different contexts. Furthermore, he did not choose to speak bluntly of freedom of the seas in balance of power terms.

In 1941, however, freedom of the seas was spoken of in undisguised balance of power terms, and America's relation to world politics was viewed from the standpoint of fighting effectiveness and not solely through the medium of legal norms. The old confusion has not been sufficiently dissipated, however, to make the phrase "freedom of the seas" an unencumbered one in the United States. It must be completely separated from its historical association with

the law of neutrality before it can represent more accurately the political sense in which it has been used in the twentieth century. After this dissociation has been made, however, the difficult task still remains of trying to solve the problem of who shall control the seas in terms of international law and organization. The solution adumbrated by Wilson has in recent years been elaborated by American policy-makers and publicists. Nonetheless, the great struggle for control of the seven seas which we now witness cannot readily be interpreted as significantly related to legal formulas. Real freedom of the seas — their use and governance by and for the international community — is submerged in accustomed rivalry in terms of fighting effectiveness.

CONCLUSION

Despite the extraordinarily complete documentation of American policy for the World War period, interpretations of American intervention have failed to arrive at a consensus. Extenuation is to be found, however, in the nature of the materials with which social "science" deals; it is too much to hope that in such large problems of interpretation private judgment can be wholly displaced by objective standards of judgment. Furthermore, our society has been in an intellectual and moral flux from which there as yet have failed to emerge generally accepted standpoints from which to view and judge the nature of the social environment. Widely different assumptions about the fundamental constitution of society can but lead to the conflicting interpretation of events which is so characteristic of our times. The extraordinary prominence of economic and propagandist theses about American intervention would seem to indicate that the large areas staked out in recent decades for the economic and non-national standpoints for interpreting society have not yet been reduced to proper proportions.

Beyond these difficulties, however, is one imbedded in American history. The nineteenth century fundamentally conditioned American foreign policy. The unique freedom of action enjoyed by the United States throughout the greater part of its independence relaxed attention to international politics and resulted in neutrality, with its underlying political assumptions of abstention and impartiality, becoming a fixed part of American foreign policy. During this period Great Britain was the only power with which the United States had important contacts. Among the great powers only Britain was in a position of influence in the Western Hemisphere, and with Britain we had reached a point of accommodation where fighting effectiveness had ceased to be a marked aspect of Anglo-American relations. This political adjustment was facilitated by the compatibility between American interests and British economic policy and ideological influence in the Americas and throughout the world. These factors which conditioned American security (in the

broad as well as narrow territorial sense) had receded from the level of consciousness and were largely taken for granted. The World War, unlike wars of the preceding hundred years which had been localized and fought over fairly concrete and easily definable issues, was a world wide struggle for power undermining the old landmarks and arousing general uncertainty and anxiety as to the future. The World War seriously disturbed the nineteenth century attitudes and assumptions of the American people--those directly responsible for American foreign policy being most seriously perturbed, while the attitude of those not directly sharing the responsibility was in varying degrees affected. There was, however, no widespread feeling that war against rising German empire was a course of action inexorably imposed on the United States. The apprehension and disfavor with which a German victory was contemplated crystallized into interventionist policy only after the quarrel over the submarine became deadlocked. In view of these circumstances it was inevitable that American policy should have suffered from ambiguity and that its several facets should have led subsequently to conflicting interpretations. Also it was in the nature of the situation that any course of action taken would have been viewed subsequently by a sizable body of American opinion as unwise and gratuitous.

Post-war confusion arose from still another circumstance --the character of Wilson's diplomacy. At first American policy was compressed into the narrow legalisms of neutrality and later it was expanded into the broad generalities of the League of Nations. In the former context it took on a commercialistic coloring and in the latter an idealistic coloring. Neither context permitted of an unencumbered statement of American interests being served. The legalistic language employed by Wilson and his courageous espousal of a league of nations were prompted by his deep impulse to tame international politics to the more humane patterns of domestic politics. As a consequence of his endeavor to characterize the problems of foreign policy in universal language serviceable to his large goal of a stable world community he paid the price of obscuring the commonplace American interests being served thereby. Furthermore, we must appreciate a special difficulty in Wilson's position. He served in that period of American history when the radically different international politics of the twentieth century came athwart the deep-seated

assumptions hitherto fostered by American experience with international politics.

Particularly noteworthy has been the difficulty experienced by post-war writers in placing the interests--economic and humanitarian--encompassed by the law of neutrality in proper perspective. It is impossible to assess with any exactness the relative importance of these considerations as a cause of American intervention. However, the significance subsequently attributed to them would seem to be an exaggeration of their role as a make-weight in the decision for war.

The unhappy prominence of the freedom of the seas issue has contributed to this state of affairs. Wilson never successfully disengaged it from its narrow neutrality context. And even if he had made clear that in a league of nations context it had quite a different significance, it did not deserve the central position in his diplomacy which he continued to accord it. Subsequent opinion has only perceived the fatuousness of the issue in its original meaning, not the peripheral significance which it came to have from Wilson's later viewpoint. New instruments of naval warfare have made the freedom of the seas issue in its historical American meaning a dead issue in the twentieth century. There is no middle ground for third parties between the difficult choices of complete acquiescence in belligerent demands (there being no assurance that such demands will remain within the limits of the "economic") and antecedent opposition to war as an instrument of policy. Thus it was that the freedom of the seas issue stultified the American declaration of war.¹ From this standpoint

¹A discerning editorial in the March 17, 1917, issue of the New Republic entitled "The Weak Spot in the American Position" brings this out with unusual clarity. Having referred to the embroilment over freedom of the seas, it continues: "This legal tangle can be complicated ad infinitum. It arises in the first place from our government's attempt to state a thoroughly differential policy in purely legal terms. It is pursuing a policy, not merely enforcing American rights, and at the same time it is refusing to describe the policy candidly and justify it, as it can be justified, on the grounds of vital national and international interest. . . ."

"The real weakness of the American position today is not the course of action we have adopted but the nature of the policy on which that action is based. . . . By obscuring the issue in legalism the administration is in the very grave danger of making the conflict with Germany sterile and altogether meaningless.

"As the thing now stands it is made to appear as if we

it was a decision "thrust" upon the United States by Germany's violation of "sacred" rights under the law of neutrality. The Congressional debates indicate that the declaration of war was not the act of a people unified in determination to reach out and stabilize its international political environment in the interest of its own long run security. The horizon of many, both contemporaneously and subsequently, was limited by the dead hand of neutrality.

Preoccupation with the relation of the norms of neutrality to American intervention resulted in the conclusion that commercialism and inept diplomacy determined the course of American action in 1917. The causes of war were generalized to be the demand for profits and the idiosyncracies of directors of foreign policy. On these assumptions the Nye investigation was made and the legislation of 1937 adopted. By this legislation the United States was to be "insulated" from world politics. That this was an inadequate reading of the former experience is suggested by the fact that this legislation rapidly became a dead letter in the war which broke out in 1939. But the self-sufficiency of extra-neutrality considerations in determining the course of American action in 1939 and after does not warrant one in minimizing the role of dispute over the law of neutrality in precipitating the declaration of war in 1917. The role which the law of neutrality played in that instance was of sufficient importance to have become a pitfall for unwary generalizers. It ill prepared American opinion for the crowding in on the United States of the international politics of the twentieth century.

were fighting a duel of honor, or worse still, fighting for the profits of our export trade. If that is all that is at stake it is not worth the bones of a single American sailor, and the contention of Mr. Bryan is fundamentally sound." (Vol. V, No. 124).

